

**McCORRISTON MILLER MUKAI MacKINNON LLP**

ATTORNEYS AT LAW

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Account No.:99999

**TO:** John R. Hillsman, Esq.  
Robert F. Miller, Esq.**FACSIMILE NO.:** (415) 403-0202  
**FACSIMILE NO.:** 521-3359**CC:** Evelyn J. Black, Esq.  
Stephen L. Hewitt, Esq.  
Richard A. Lesser, Esq.**FACSIMILE NO.:** 441-1243  
**FACSIMILE NO.:** (818) 509-0402  
**FACSIMILE NO.:** (310) 372-7715**FROM:** Jonathan H. Steiner, Esq.**DATE:** June 15, 2005**TOTAL NUMBER OF PAGES SENT (including this page):** 4**RE:** Claypool et al. vs. Isham; Civil No. 04-00570  
Lexington Insurance Company Policy No. 1323464

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**TRANSMITTED HEREWITH IS/ARE THE FOLLOWING:****Letter dated June 15, 2005, from Jonathan Steiner.****REMARKS:****OPERATOR:** Joy C.**EXHIBIT E****If you do not receive all of the pages, please call as soon as possible: (808) 529-7379.**

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June 15, 2005

**VIA FACSIMILE NO. (415) 403-0202**

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**VIA FACSIMILE NO. 521-3359**

Robert F. Miller, Esq.  
Dillingham Transportation Building  
735 Bishop Street, PH 500  
Honolulu, Hawaii 96813

Re: Claypool et al. vs. Isham; Civil No. 04-00570  
Lexington Insurance Company Policy No. 1323464

Dear Mr. Hillman and Mr. Miller:

I represent Lexington Insurance Company ("Lexington"), insurer for Matthew Isham ("Isham") and Blue Dolphin Charters, Ltd./Blue Dolphin Diving, Ltd. ("BDC"). This letter is in regards to the Claytons' policy limits demand, in exchange for a release of all claims by the Claytons against Isham and a "dollar for dollar" credit to BDC.

On behalf of Lexington, I am authorized to tender the \$1,000,000 in available policy limits, pursuant to the following conditions, which the Claypools, Isham, and BDC all must agree to in writing:

1. The Claypools shall execute a full release and indemnity agreement as to all claims by the Claypools against Isham.
2. As the \$1,000,000 tendered, any amounts above Isham's proportional liability shall be credited towards any proportionate liability of BDC. By way of example, and not based on any determination of the value of the case, if there was a 2 million dollar verdict in favor of the Claypools, and BDC and Isham were each found to be 25% at fault, and Capt. Andy's was found to be 50% at fault, then BDC would receive a \$500,000 credit of the settlement amounts paid, and, based on liability of \$500,000, would have no further liability. The idea is that in the event Isham proportion of fault results in less than what he settled for, then BDC gets a credit for any additional amount. However, if Isham's proportion of fault results in more than what he paid in settlement, BDC would not be penalized or be liable for any "underpayment". This provision contemplates the jury making a determination of proportionate liability as to all

John R. Hillsman, Esq.  
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defendants, regardless of whether they have settled, pursuant to McDermott, Inc. v. AmClyde, 511 U.S. 202 (1994), but modifies the "proportionate fault" approach therein. This agreement would not affect any "proportionate fault" analysis as to Capt. Andy's liability to the Claypools, but would only affect the amounts which BDC would potentially be liable for as to the Claypools. Finally, even if Capt. Andy's settles before any determination of liability, the "proportionate fault" of Capt. Andy's pursuant to AmClyde would apply, but BDC would still receive the credit for any overpayment by Isham.

3. BDC and its counsel have been informed and understand that, by tendering the policy limits, (1) Lexington would no longer have an obligation to provide a defense for BDC in this or any other related action under the above referenced policy; (2) Lexington would withdraw the bond paid on the vessel in the related limitation action, but would allow BDC a reasonable period of time, not to exceed \_\_\_\_ days, to obtain a replacement bond; (3) as to any liability of BDC, Lexington would not be obligated to provide indemnity under the above referenced policy; and (4) Lexington makes no representations as to whether or not any other insurance may be applicable and cover BDC as to the accident. Despite consideration of all of the foregoing, BDC requests Lexington to tender the applicable policy limits.

4. The Claypools will agree and covenant not to execute on or pursue the corporate assets of BDC, or the personal assets of Terry Donnelly to satisfy any liability of BDC, but will instead only pursue any applicable insurance proceeds. Neither Lexington, BDC, nor Donnelly make any representations as to whether there exists any other insurance policies which apply, and all parties reserve their rights in this regard.

If the foregoing is acceptable, please execute and return a copy of this letter.

Alternatively, Lexington would be willing to tender the full \$1,000,000 policy limits for a full release and indemnity for both Isham and BDC.

Very truly yours,

McCORMISTON MILLER MUKAI MacKINNON LLP

  
Jonathan H. Steiner

JHS:jmc

cc: Evelyn J. Black, Esq.  
Stephen L. Hewitt, Esq.  
Richard A. Lesser, Esq.

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APPROVED AND ACCEPTED:

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John R. Hillsman, Esq.

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Robert F. Miller, Esq.